

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN BURTON,

Plaintiff,

No. C 07-5618 PJH (PR)

v.

ORDER OF DISMISSAL

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

Plaintiff, an inmate at the San Diego Central Jail, filed a pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Southern District of California. Because the complaint involves events which occurred when plaintiff was housed at Salinas Valley State Prison, which is in this district, the Southern District transferred it here. Plaintiff also requests leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Similarly, the court may dismiss on these grounds a case filed in forma pauperis, whether filed by a prisoner or not. 28 U.S.C. § 1915(e). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

B. Analysis


The complaint in this case is a copy of the complaint plaintiff filed to commence case number C 07-4967 PJH (PR), a case which previously was transferred here from the Southern District. An in forma pauperis complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of section 1915(e). *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). An in forma pauperis complaint repeating the same factual allegations asserted in an earlier case, as here, even if filed against new defendants, is therefore subject to dismissal as duplicative. See *id.* The petition therefore will be dismissed.

CONCLUSION

Leave to proceed in forma pauperis (document 2 on the docket) is **DENIED**. The complaint is **DISMISSED** as duplicative. The clerk shall close the file.

IT IS SO ORDERED.

Dated: November 13, 2007.



PHYLLIS J. HAMILTON
United States District Judge

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